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GOVERNMENT OF MYSORE.

LABOUR DEPARTMENT.

NOTIFICATION.

No. L.S. 4137—L.W. 172-52-17, dated 31st October 1952.

Labour Disputes—Dispute between Workers and Management of the C.P.C. Motor Service, Mysore——Award of the Industrial Tribunal, Bangalore—Published.

Read the following papers :—

1. Letter dated 18th October 1952, from Sri B. R. Ramalingiah, Chairman, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL, BANGALORE.

Tuesday the 14th October 1952.

Present.

Sri B. R. Ramalingaiah, M.A., B.L. ... *Chairman.*
Sri Mahmood Sheriff, B.A., LL.B. ... *Member.*
Sri K. Shamaraja Iyengar, B.A. ... *Member.*

Complaint No. III in A. C. No. 1—51-52.

Sri Javaraiah, Conductor, C.P.C, Motor Service, Mysore, represented by the Mysore District Automobile Workers' Association, Mysore ... *Complainant [Petitioner]*

vs.

Proprietor, C.P.C. Motor Service, Mysore, represented by the Mysore District Automobile Owners' Association, Mysore ... *Respondent.*

AWARD.

This is a complaint under Section 33 (A) of the Industrial Disputes Act, 1947, by the complainant Javaraiah, who was working as a Conductor in the Respondent's C.P.C. Motor Service, filed during the pendency of the proceedings in the said A. C. No. 1/51-52, before the Tribunal, praying for an Award directing his reinstatement as Conductor in the Respondent's service, and granting him his wage and batta from the date of the discharge till his reinstatement, with cost of the petition.

It is alleged in the petition that the petitioner was working as Conductor in the Respondent's Motor Service for the past seven years. The respondent dismissed him from service on 7th February 1952 abruptly when he refused to go on the line in a over-loaded bus. His dismissal by the respondent is illegal as the same was done during the pendency of the said A.C. 1/51-52, without the express written permission of the Tribunal as is required by Section 33 of the Industrial Disputes Act. Hence, the petitioner has filed this petition for the said relief.

The respondent has opposed this application and as stated by him, in his objection statement, the petitioner, who was working as a temporary conductor from 28th March 1948, and who of his own accord absented himself from 3rd December 1948, was re-employed at his request by the respondent on 16th May 1951 temporarily on daily wages and had drawn his wages for the number of days he worked in each

month since then. The services of the petitioner were not wanted from 8th February 1952, and he was asked on that day to take his wages due to him for the number of days he had worked in January and February 1952. But he refused to take his wages. It is not true that the petitioner worked for seven years under the respondent as contended by him. He was not a permanent conductor and he was not dismissed as such. The petition is not maintainable and is liable to be dismissed.

By way of reply the petitioner has stated that it is not true that he was employed on a temporary basis as alleged by the respondent, that he was permanently employed as conductor on a monthly basis in the Respondent's Motor Service, and that the reason for his removal as stated in the objection statement is not correct or fair, and that it is not true to state that there was no unfair labour practice on the part of the Respondent. Hence, the petitioner has prayed that the petition be allowed by granting him the relief prayed for.

The objection statement filed by the respondent shows that the respondent has admitted in unequivocal terms (1) that the petitioner was working as conductor in his service till 8th February 1952 and (2) that the respondent dismissed him from service on 8th February 1952. The evidence of the Manager of the respondent (R.W.1), who has been examined, as a witness on his side, shows that the petitioner worked even on 7th February 1952. His evidence is borne out by the entry exhibit 4 (B) in exhibit 4, the Lines Attendence Register. The petitioner has not examined himself to prove that the respondent dismissed him from 7th February 1952. In the light of the evidence adduced on the side of the respondent it may be taken as proved that the services of the petitioner were dispensed with as from 8th February 1952 as pleaded by the respondent in the objection statement and not from 7th February 1952 as alleged in the complaint by the complainant. It is alleged in the complaint that the respondent dismissed the complainant because the latter refused to go on the line in a over-loaded bus. The petitioner has not chosen to examine himself to prove this allegation. Hence, the said allegation made to account for his dismissal cannot be said to be true. The respondent in his objection statement states that the petitioner's services were dispensed with on 8th February 1952 on the ground that his services were not required. It may be taken that the petitioner was dismissed by the respondent on 8th February 1952 on this ground. The reason for the dismissal of the petitioner from service by the respondent from 8th February 1952 is not of very much importance for determining whether the complaint should be allowed or not.

The said A.C. No. 1—51-52 was pending on the file of the Tribunal when the Respondent dismissed the petitioner under the circumstances stated in his objection statement, on 8th February 1952. Admittedly, as shown above, the petitioner who was working as a Conductor in the Respondent's Motor Service, was dismissed by the Respondent on 8th February 1952 during the pendency of the proceedings of the said case without the express written permission of this Tribunal. If the petitioner was working then as a workman within the meaning of the expression "workman" as defined in section 2 (s) of the Industrial Disputes Act, 1947, on 8th February 1952, the Respondent has contravened Section 33 of the Act by dismissing him from his service without the express written permission of the Tribunal. The Respondent contends, that, as the petitioner was working as a temporary conductor in his service, no express permission of the Tribunal was necessary before he dismissed him and, hence he has not contravened Section 33 of the said Act. In the light of this contention the following points arise for adjudication by this Tribunal.

(1) Whether the petitioner was only a temporary conductor in the Respondent's Motor Service, and (2) if he was only a temporary conductor, whether he was not a workman as defined in Section 2(s) of the said Act.

The evidence of the Manager (R. W. 1) examined on the side of the Respondent supported as it is by exhibits 1(*a*), 2(*a*), 3(*a*), 4(*a*), 5, 10, 11(*b*) and 11(*c*), shows that in the registers and vouchers of the Respondent's Motor Service, the petitioner has been, no doubt, described as a temporary conductor. But the documentary evidence adduced on the side of the Respondent shows that though the petitioner was described as a temporary conductor, there was practically no distinction between him and a permanent conductor. In the first place, it has not been shown by the Respondent that the petitioner was holding the office of a conductor as a substitute in the place of a permanent employee, and that on 8th February 1952 his services were terminated for reasons beyond his control because the permanent employee returned to duty on that date. On the other hand, the Respondent has admitted in his objection statement that his services were dispensed with on 8th February 1952 because they were not wanted. In the second place, it has not been proved by the Respondent that the petitioner was being entertained as a conductor only when work was available for discharge by him as conductor. The entries in the Attendance Register, exhibit 4, for the period from May 1951 to February 1952, which show that for his services as conductor in each of the said months he was paid wages by the Respondent in the subsequent months, and that as conductor he has worked in the months of May, June, July, August, September, October and November 1951, for 15 days, 23 days, 13 days, 17 days, 6 days, 7½ days and 4½ days respectively, and in the months of January and February 1952 for 25 days and 7 days respectively, belies this allegation. It may be, that the petitioner would have worked for the rest of the month of February 1952 if the Respondent had not abruptly dismissed him from his service as from 8th February 1952. That the allegation made in the objection statement that the Respondent informed the petitioner on 8th February 1952 that his services were not wanted, is obviously false is clear from exhibit 4(*b*) in which the letter "A" indicating that the petitioner was absent, was first written in the columns for the dates 8th to 15th against the petitioner and later on scored out. The writing in exhibit 4(*b*) "stopped from 8th February 1952" has evidently been written afterwards for purposes of this case.

In the third place it has not been proved that there was really distinction between the temporary and permanent conductors in the Respondent's Motor Service. No Standing Orders of the Respondent's Motor Service has been produced to show that there was really such a distinction between them. It has not also been shown under what circumstances a person was appointed only on a temporary basis as a conductor. Even the witness examined on the side of the Respondent has not thrown light on this point. For the reasons stated above, it cannot at all be said that the petitioner was not a permanent conductor, but that he was working only as a temporary conductor.

Even if he was a temporary conductor it cannot be said at all that he was not a workman within the meaning of the expression "workman" as defined in Section 2(*s*) of the said Act. Having regard to this definition of workman, no distinction can be drawn between persons permanently employed and those temporarily employed. Even if a person is temporarily employed, his services cannot be dispensed with by the employer during the pendency of an industrial dispute, as in this case, without the express written permission of the Tribunal. As the Respondent has admittedly dismissed the petitioner for unjustifiable reasons, he has contravened clearly Section 33 of the Act, and the petitioner is entitled to be reinstated as conductor in the Respondent's Service.

The next point for consideration in connection with this case relates to the question of compensation payable to the complainant for wrongful dismissal. It is seen from the entries made against the petitioner, as per exhibits 1(*a*), 2(*a*), and 4(*a*),

and from the evidence of the Manager (R.W.1), that he was very irregular in attendance, that he was absent from duty from 3rd December 1948 till 16th May 1951 when he was taken back to service, and that even subsequent to 16th May 1951, he was, in each month absenting himself from duty very often. Having regard to these circumstances he is not entitled, in our view, to more than 7 days' wages as compensation.

In the result, we allow the complaint and direct that the Respondent shall pay as compensation to the petitioner his wages for seven days and reinstate him as conductor in his service if he should apply for such reinstatement within 15 days after this Award becomes enforceable. We make no orders to the cost of the application. This Award shall be submitted to Government for publication under Section 17 of the Industrial Disputes Act, 1947.

K. SHAMARAJA IYENGAR. MAHAMOOD SHERIFF. B. R. RAMALINGIAH.
Member. Member. Chairman.

ORDER No. L.S. 4137—L.W. 172-52-17, DATED, BANGALORE, 31ST OCTOBER 1952.

Whereas under Section 33 (A) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), a complaint was made by Sri Javariah—Conductor, C.P.C. Motor Service, Mysore, to the Industrial Tribunal, Bangalore, that his employers (the Management of C.P.C. Motor Service, Mysore) have during the pendency of proceedings before the Tribunal, contravened the provisions of Section 33 of the said Act;

And whereas the Award of the said Tribunal in respect of the said complaint has been received;

Now, therefore, in exercise of the powers conferred by Section 17 of the said Act, the Government of Mysore hereby direct that the said Award, as above, be published in the *Mysore Gazette*.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Secretary to Government,
Law Department.